

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS
3
4
5 TRAN-SPEC TRUCK SERVICE, INC.
6 400-70 TRUCK SERVICE,
7 Plaintiff
8 V. CIVIL ACTION
9 CATERPILLAR, INC., No. 0411836RCL
10 Defendant

11 AUDIOVISUAL DEPOSITION OF ROBERT G.
12 BARTON, JR., a witness called on behalf of the
13 Defendant, pursuant to Federal Rules of Civil
14 Procedure, before Carolyn J. Rogers, Certified
15 Shorthand Reporter and Notary Public in and for the
16 Commonwealth of Massachusetts, at the Offices of
17 CAMPBELL CAMPBELL EDWARDS & CONROY, One Constitution
18 Place, Boston, Massachusetts, on TUESDAY, MAY 17,
19 2005, commencing at 9:30 a.m.

20
21
22 C. J. REPORTING
23 85 Colonial Drive, Unit No. 7
24 Andover, Massachusetts 01810
978.409.9090
www.cjreporting.com

2 MR. GRUNERT: The witness is going to read
3 and sign the transcript under the pains and penalties
4 of perjury, but notarization of the signature is
5 waived. Objections except as to the form of the
6 question are reserved until the time of trial, and
7 motions to strike are reserved until the time of
8 trial.

9 THE VIDEOGRAPHER: We are now on the
10 record. The date is May 17, 2005. The time is
11 approximately 9:34 a.m. We are located in the
12 offices of Campbell, Campbell, Edwards and Conroy in
13 Boston, Massachusetts. The defendant in the case of
14 Trans-Spec Truck Services, Incorporated versus
15 Caterpillar, Incorporated, Civil Action No.
16 0411836RCL, will take the audiovisual deposition of
17 Mr. Robert Barton. My name is William Barton, no
18 relation to the defendant, of In-Court Technologies,
19 Boston, Massachusetts, and I am the videographer for
20 this deposition. The stenographer is Carolyn J.
21 Rogers of C. J. Reporting. At this time the
22 attorneys will introduce themselves for the record.

23 MR. GRUNERT: My name is John Grunert of
24 the firm of Campbell, Campbell, Edwards and Conroy.

C. J. REPORTING 978.409.9090

www.cjreporting.com

PAGE 2

1 **APPEARANCES:**

2 JOHN A.K. GRUNERT, ESQUIRE
3 Campbell Campbell Edwards & Conroy
4 One Constitution Plaza
5 Boston, MA 02110
6 (617) 241-3000/FAX (617) 241-5115
7 On Behalf of the Defendant Caterpillar, Inc.

8 CHRISTIAN G. SAMITO, ESQUIRE
9 Donovan Hatem LLP
10 Two Seaport Lane
11 Boston, MA 02210
12 (617) 406-4500/Fax (617) 406-4501
13 On Behalf of the Plaintiff
14 Trans-Spec Truck Service, Inc.

15 **ALSO PRESENT:**

16 William Barton, Videographer
17 In-Court Technologies

18
19
20
21
22
23
24
C. J. REPORTING 978.409.9090
www.cjreporting.com

PAGE 5

1 I represent the defendant Caterpillar, Inc.

2 MR. SAMITO: Christian G. Samito of the
3 firm Donovan and Hatem, representing Mr. Barton and
4 Trans-Spec Truck Service, Inc.

5 THE VIDEOGRAPHER: The stenographer will
6 now swear in the witness.

7 ROBERT G. BARTON, JR.,
8 a witness called on behalf of the Defendant, having
9 first been satisfactorily identified by the
10 production of his driver's license and duly sworn by
11 the reporter/notary public, testifies and says as
12 follows:

13 **DIRECT EXAMINATION**

14 BY MR. GRUNERT:

15 Q. State your full name for the record,
16 please?

17 A. Robert G. Barton, Jr..

18 Q. What is your date of birth, Mr. Barton?

19 A. 1/1/49.

20 Q. Where do you live?

21 A. 89 Central Street, West Boylston,
22 Massachusetts.

23 Q. Are you married?

24 A. Yes.

C. J. REPORTING 978.409.9090

www.cjreporting.com

PAGE 3

1 **INDEX**

2 **DEPONENT** **EXAMINATION BY** **PAGE NO.**
3 Robert G. Barton, Jr.
4 (Mr. Grunert) 4, 170
5 (Mr. Samito) 145, 194

6 **EXHIBITS**

7 **NO.** **DESCRIPTION** **PAGE NO.**
8
9 1 Photocopy of Electronic Calendar 12
10 2 Plywood Housing Repair 2002-2004 18
11 3 Color Copies of Photographs 62
12 4 Photocopies of Photographs 134
13 5 Photocopies of Photographs 136
14 6 Color Copies of Photographs 146

15
16
17
18
19
20
21
22
23
24
C. J. REPORTING 978.409.9090
www.cjreporting.com

PAGE 6

1 Q. Do you have children?

2 A. Yes.

3 Q. Are you employed by Trans-Spec Truck
4 Service, Inc.?

5 A. Yes, I am.

6 Q. How long have you been employed by
7 Trans-Spec?

8 A. Since October of 2003.

9 Q. Who was your employer before October of
10 2003?

11 A. Santa Fuel.

12 Q. What was the first name?

13 A. Santa.

14 Q. As in Santa Claus?

15 A. As in Santa Claus.

16 Q. Gotcha.

17 A. Bridgeport, Connecticut.

18 Q. Is Santa Fuel -- or was Santa Fuel owned
19 or affiliated in any way with Joseph Howard?

20 A. No.

21 Q. Was it affiliated in any way with
22 Trans-Spec?

23 A. No.

24 Q. Is it accurate that you played no role in

C. J. REPORTING 978.409.9090

www.cjreporting.com

EXHIBIT

tabbies

1 Q. Do you have an understanding of the
2 recollection that this is when Mr. Cardoza said they
3 had certain fixes or made a suggestion regarding
4 dowels?
5 A. **He may have been suggesting them at that**
6 **time, I believe.**
7 Q. What did Mr. Cardoza say?
8 A. **I believe this was in the conversation**
9 **involving the setscrews so the dowels wouldn't back**
10 **out.**
11 Q. Did Mr. Cardoza say that he was consulting
12 with others at this time?
13 A. **They were -- he was working with**
14 **Caterpillar engineering, trying to find a solution is**
15 **what he would tell me.**
16 Q. How often did Mr. Cardoza come to
17 Trans-Spec's facilities to inspect?
18 A. **I think I saw him there about five times,**
19 **maybe more, maybe less.**
20 Q. Did you see him at Tri State?
21 A. **Yes.**
22 Q. The tapping and capping work that you
23 referred to earlier by the machine shop, was this one
24 of the fixes suggested by Cardoza?

C. J. REPORTING 978.409.9090

www.cjreporting.com

PAGE 152

1 A. **Yes, it was.**
2 Q. Who paid for the work performed by this
3 machine shop?
4 A. **I believe Trans-Spec had to pay for a few**
5 **of them. The ones that were done at Freightliner,**
6 **I'm sure -- I don't know who paid for them, but I'm**
7 **sure somebody did.**
8 Q. The entry for Saturday May 8, 2004, "Shop
9 check on how many flywheel have been done, 15," to
10 what does this entry refer?
11 A. **I probably asked one of the mechanics to**
12 **give me a list of how many flywheels had been done.**
13 Q. Done in total or in-house?
14 A. **No. In total.**
15 Q. The June 29, 2004, entry, "CAT ready for
16 dyno Thursday," to what does this entry refer?
17 A. **This is the day that they wanted the truck**
18 **down to Caterpillar. They had notified me they**
19 **wanted to do the dyno on Thursday.**
20 Q. Was this as a result of the June meeting
21 with Al Cardoza and Troy Guidotti?
22 A. **I believe so, one of the meetings.**
23 Q. Down at the bottom of the page, it says,
24 "7400F Freightliner not fixed." What was wrong with

C. J. REPORTING 978.409.9090

www.cjreporting.com

PAGE 153

1 Truck 7400?
2 A. **I believe it was at one of the**
3 **dealerships, and it was just sitting there. They**
4 **hadn't gotten it in yet.**
5 Q. Do you remember how long it had been down?
6 A. **I believe it was over a week or so,**
7 **because they only could get one in at a time.**
8 Q. Looking at Howard Exhibit 12, do you
9 recognize that page? It's the second page of Howard
10 Exhibit 12.
11 A. **Yes.**
12 Q. What is this?
13 A. **This is just a little writeup I had on the**
14 **front of -- I was trying keep track of where these**
15 **trucks were going.**
16 Q. You prepared that?
17 A. **Yes.**
18 Q. Looking at your calendar entry for
19 June 29, 2004, and looking at second page of Howard
20 Exhibit 12, is June 29 the correct date for the
21 notation marked 9/29 in Howard Exhibit 12?
22 A. **Probably not.**
23 Q. Should that read "6/29" on the second page
24 of Howard Exhibit 12?

C. J. REPORTING 978.409.9090

www.cjreporting.com

1 A. **I'm not sure, but probably.**
2 Q. Getting back to the calendar entries for
3 June 30, 2004, it says "CAT-Milford pick up 8000."
4 To what does that refer?
5 A. **That means the tractor was done.**
6 Q. Was that a flywheel repair?
7 A. **Yes, it was.**
8 Q. We don't need that anymore. You can --
9 And then on July 6, 2004, there's an
10 entry "CAT-Milford with 8000." Was this the dyno
11 test?
12 A. **Yes, it was.**
13 Q. What truck was used for the dyno test?
14 A. **8000.**
15 Q. You earlier testified that you asked about
16 what would happen with the data that was gathered,
17 and you said that you learned that it was going to be
18 turned over to engineering. Whose engineering?
19 A. **Caterpillar's.**
20 Q. Did you ever learn what Caterpillar's
21 engineering came up with, based on that data?
22 A. **No.**
23 Q. Who did you ask?
24 A. **Al Cardoza.**

C. J. REPORTING 978.409.9090

www.cjreporting.com

PAGE 155

1 Q. Could the statements in the Trans-Spec
2 answers to interrogatories based on possible theories
3 as to what was causing the engine problems, could
4 that have been said to someone other than you at
5 Trans-Spec?
6 MR. GRUNERT: Object to the form.
7 A. **Very possibly.**
8 Q. Turning to August 9, 2004, in the calendar
9 entries, to what does this -- oh, I'm sorry, you're
10 not there yet. There's one entry on this page:
11 "CAT-Milford, Troy, Al." To what meeting does this
12 refer?
13 A. **I believe that was a second meeting we had**
14 **there.**
15 Q. This was the one that involved --
16 A. **Schoening, Al, myself, Jay, I believe will**
17 **Witcher.**
18 Q. And what did Schoening say about
19 Trans-Spec's problems with the engines?
20 A. **That they would make us whole. It wasn't**
21 **our -- it wasn't Trans-Spec's problem.**
22 Q. And what did you do, if at all, walk away
23 from Mr. Schoening after August 9, 2004, after this
24 meeting?

C. J. REPORTING 978.409.9090

www.cjreporting.com

PAGE 156

1 A. **After this meeting, the only one I talked**
2 **to was Al Cardoza to see what they came up with.**
3 Q. Did you ever call Schoening?
4 A. **I had put in a couple calls to him. I**
5 **never got a return call.**
6 Q. The next day, August 10, 2004, you earlier
7 testified about a truck breaking down in Connecticut
8 and needing to be towed back. Is that what this
9 refers to? I see, "10 CT"?
10 A. **Yes, it is.**
11 Q. Did you call Mr. Guidotti regarding this?
12 A. **Yes, I did.**
13 Q. And is this when you had the conversation
14 with Mr. Guidotti?
15 A. **Yeah, I asked him. I asked him if he**
16 **would, you know, if he'd take care of the towing, if**
17 **he had any recommendations where we could get it**
18 **fixed.**
19 Q. So it was after the August 9 meeting,
20 then?
21 A. **Yes.**
22 Q. August 13, 2004, the last entry, "Al/CAT
23 will extend service coverage till June 1, 2005, will
24 not put in writing." To what does this refer?

C. J. REPORTING 978.409.9090

www.cjreporting.com

1 I want to go to Caterpillar to see -- I was in
2 Milford. I stopped at the Caterpillar office. Al
3 Cardoza came down to the foyer and met me. I asked
4 him what they had come up with. He told me that they
5 were going to extend our warranty to June 1st of
6 2005, and at that time, I asked him if he'd put that
7 in writing, and he told me no.

8 Q. Was your going down a result of the
9 August 9th meeting?

10 A. I was in the area, yes, and I wanted to
11 find out if we had some results.

12 Q. Who was present at that discussion?

13 A. It was just Al and myself in the front
14 foyer.

15 Q. September 7, 2004, there's an entry, "8300
16 flywheel, Milton advised Alan, Jim, need paperwork on
17 units done at their shop."

18 MR. GRUNERT: I'm sorry, what date?

19 MR. SAMITO: September 7, 2004, and it's
20 the entry next to 9/10.

21 A. I put a call in that I needed some
22 paperwork on these units, because what would happen
23 is, they would fix the units, and then the paperwork
24 would have to be forwarded to Caterpillar for

C. J. REPORTING 978.409.9090

www.cjreporting.com

PAGE 158

1 approval. So in other words, I would pick up a
2 truck, and I had no record of what was done, when it
3 was done, or whatever, because it had to go to
4 Caterpillar first to be approved. Then, it would
5 come back to Milton, I guess.

6 Q. You said you called. So the conversation
7 took place by phone?

8 A. Uh-huh.

9 Q. Who called who? Who initiated the call?

10 A. I did.

11 Q. And does "Jim" refer to Jim Withrow?

12 A. Yes. He's the service manager.

13 Q. Was it routine for you not to receive all
14 of the paperwork on the repairs being done?

15 A. I never received any paperwork. All their
16 paperwork would have to go forwarded to Caterpillar
17 for approval. Then it would come back, and from time
18 to time I'd have to call Jim, get together with him,
19 and then he would make me copies.

20 Q. Has that caused any problems in terms of
21 Trans-Spec's recordkeeping on the problems?

22 A. Yes. There's no way of really tracking
23 how long the truck's been tied up down there other
24 than trying to go through our dispatch sheet and see

C. J. REPORTING 978.409.9090

www.cjreporting.com

PAGE 159

1 how long a truck's been down. Only Caterpillar has
2 that exact record of when it was there and when it
3 was released.

4 Q. Does this entry mean that 8300 was picked
5 up or brought for repair on this day? It says 8300.
6 Does that mean it's --

7 A. It means it obviously must have been --
8 the flywheel was repaired. We had the truck back. I
9 just didn't have the paperwork.

10 Q. The next day, September 8, 2004, "7400 to
11 Freightliner." What does this entry mean?

12 A. This means we brought the truck to
13 Freightliner to have the flywheel -- the flywheel was
14 cracked on it and the front cover was leaking. In
15 other words, they had an opening to get it in and fix
16 it.

17 Q. Well, if you turn a few pages to
18 September 14, 2004, the first entry is "8300 still
19 not in Milton. Jim Wood will be in end of week.
20 Truck just sitting yard." What does it mean that
21 Truck 8300 was just sitting in the yard?

22 A. I had brought the truck down there
23 probably a week prior. Jim was on vacation. The
24 truck was supposed to go in the night I brought it

C. J. REPORTING 978.409.9090

www.cjreporting.com

1 down. It didn't go in, because obviously they didn't
2 have people to work on it. The truck sat there a
3 week or so, and I couldn't get -- until Jim comes
4 back, you couldn't get anything done. So basically,
5 the truck sat there. They didn't start working on
6 it, collecting dust, and tied up.

7 Q. So the entry on September 7 in your
8 calendar means that you brought the truck down?

9 A. Uh-huh.

10 Q. 8300 down?

11 A. Uh-huh.

12 Q. Who's Jim Wood?

13 A. He's the service manager at MiltonCAT.

14 Q. You mean Jim Withrow?

15 A. Withrow, yeah, I'm sorry.

16 Q. So "Jim Withrow will be in end of week."
17 You didn't speak to him directly?

18 A. No, he was on vacation. I talked to his
19 assistant, Andy, who --

20 Q. Do you know Andy's last name?

21 A. No, I don't.

22 Q. Why was Trans-Spec sending its trucks to
23 various repair facilities?

24 A. Because we didn't have enough trucks to

C. J. REPORTING 978.409.9090

www.cjreporting.com

PAGE 161

1 make the delivery. We were trying to get them fixed
2 as fast as possible. Freightliner could only handle
3 one or two at a time, and then Caterpillar could
4 only -- they had one or two bays they were using for
5 us, but they'd let our trucks sit and they'd get more
6 trucks in. They're just busy. They're just
7 overwhelmed with repairs.

8 Q. September 15, 2004, the second entry,
9 "7400 not in at Freightliner. Talked with Rob. Will
10 be in soon at Shrewsbury." To what does that refer?

11 A. Another case of the truck sitting outside.
12 I felt it was promised to get in there and they're
13 going to be working on it. Obviously, they didn't
14 get it in there on time. It was still just sitting
15 out there collecting dust.

16 Q. From your calendar entry September 8, does
17 that indicate that 7400 was at Tri State since
18 September 8 and September 15 it still hadn't been --

19 A. Correct.

20 Q. Who is Rob?

21 A. He is the service manager at Freightliner.

22 Q. Is this Rob Lynds?

23 A. Yes.

24 Q. September 21, 2004, there's an entry,

C. J. REPORTING 978.409.9090

www.cjreporting.com

PAGE 162

1 "E-mailed CAT about TOPP repair problem, received
2 e-mail back saying someone from Southworth-Milton
3 would be in touch. Al Cardoza said program no longer
4 exists." What is TOPP, T-O-P-P?

5 A. I went onto Caterpillar's website and I
6 saw they had a warranty program. So I e-mailed them
7 some information on it, and they sent me back an
8 e-mail stating someone from Milton would be in touch
9 with me.

10 Q. When you say "warranty" -- just to take
11 this a little slower, when you say "warranty," was
12 this a new warranty? Was this a warranty extension?

13 A. This is an extended warranty.

14 Q. Okay. And you found it on the website.

15 How did you e-mail Caterpillar?

16 A. From my laptop.

17 Q. Whom did you e-mail?

18 A. To Caterpillar.

19 Q. But did it have an e-mail address?

20 A. Yes, it had an e-mail, www.Caterpillar.

21 Q. Did you input, as sometimes
22 organizations --

23 A. My name --

24 Q. Did you input it into a form that then

C. J. REPORTING 978.409.9090

www.cjreporting.com

1 channel to go to.

2 **A. (Witness nods head.)**

3 **Q.** And did you receive a personal response or

4 was it an automated response?

5 **A. I received a response that someone from**

6 **Southworth-Milton would be in touch with me.**

7 **Q.** And then who responded from

8 Southworth-Milton?

9 **A. I received an e-mail from Jim Withrow from**

10 **Southworth-Milton. Prior to that, I called Al**

11 **Cardoza about it, and Al Cardoza told me the program**

12 **no longer existed. And then I then -- the next day I**

13 **received an e-mail from Jim Withrow explaining to me**

14 **they have what's called an Advantage program for an**

15 **additional 250,000 miles, or 200 miles.**

16 **Q.** The next entry, "Freightliner re 7400

17 doing front structure first." Does that mean 7400

18 was still at Tri State during this time?

19 **A. I believe so.**

20 **Q.** So 7400 was in since September 8?

21 **A. Yes.**

22 **Q.** The next entry refers to East River.

23 "Billy told East River can't do work." What is East

24 River?

C. J. REPORTING 978.409.9090
www.cjreporting.com

2 **Q.** And it had been repaired and it had to go

3 back to Caterpillar for further repair?

4 **A. That's correct. I believe this vehicle**

5 **sat at Freightliner solong that we finally ended up**

6 **taking it to CAT because they had an opening. They**

7 **fixed it. There happened to be an exhaust leak We**

8 **had to take it back.**

9 **Q.** It says "Dropped off parts for 8300."

10 Does that mean that 8300 was still in the shop since

11 your September 7th entry?

12 **A. Very possible. Obviously, they had a**

13 **flywheel apart and before they put it back together,**

14 **they noticed the clutch might have been bad, so we**

15 **probably brought them out a new clutch. So when they**

16 **were reassembling, they put the clutch in as well.**

17 **Q.** Are you familiar with the repair history

18 of Truck 6100 in early October 2004?

19 **A. You'll have to refresh my memory.**

20 **MR. SAMITO:** Why don't we mark this.

21 (Exhibit No. 6 marked for identification.)

22 **Q.** I show you Barton Exhibit 6, which is a

23 four-page packet of photographs, and I'll describe

24 the pages. One is dated October 6, 2004, one

photograph on the page. There's another page that

C. J. REPORTING 978.409.9090
www.cjreporting.com

1 **A. It's an oil company in Connecticut that**

2 **we -- that Trans-Spec does transportation for.**

3 **Q.** Why did Trans-Spec -- I'm assuming Billy

4 is Billy Howard?

5 **A. Yes. Billy is the dispatcher.**

6 **Q.** Why did Billy at Trans-Spec say that

7 Trans-Spec can't do work for East River?

8 **A. I told him he didn't have the equipment to**

9 **do it now. We had too many trucks down. And to be**

10 **fair with the customer and let him know that we just**

11 **couldn't handle it.**

12 **Q.** Skipping one entry down to where it says,

13 "Jim at CAT said bolts were covered. Jay and Bob

14 present." Who is Jim?

15 **A. Jim is the service manager, Withrow.**

16 **Q.** Jim Withrow?

17 **A. Withrow, yes.**

18 **Q.** Where did this conversation take place?

19 **A. Somebody had mentioned something about**

20 **bolts weren't covered or something, and I -- when we**

21 **went to pick up a truck, I says, "Jim what's the**

22 **story? Are the bolts covered or not?" He says, "Of**

23 **course they're covered."**

24 **Q.** The last entry, "Gary check for flywheel

C. J. REPORTING 978.409.9090
www.cjreporting.com

1 has two photographs dated October 8, 2004, another

2 page that has four photographs dated October 6, 2004,

3 and a final page with four photographs dated

4 October 15, 2004. Do you recognize where these

5 pictures were taken?

6 **A. Yes.**

7 **Q.** Where?

8 **A. Freightliner in Shrewsbury, Massachusetts.**

9 **Q.** Who took them?

10 **A. I did.**

11 **Q.** Where these for Truck 6100?

12 **A. Yes.**

13 **Q.** Does this refresh your memory?

14 **A. Yes, it does.**

15 **Q.** Can you describe what happened in early

16 October 2004 regarding repair of Truck 6100?

17 **A. I received a call from the Freightliner**

18 **dealership that Al Cardoza had come out and inspected**

19 **a truck and told the mechanics to put a new flywheel**

20 **on it and put it back together and epoxy the block.**

21 **Subsequently, I went up there. The**

22 **mechanic did not feel that this was suitable. The**

23 **owner of Freightliner also was very concerned as to**

24 **the fact that if they put it back together without**

C. J. REPORTING 978.409.9090
www.cjreporting.com

1 cracks." Who is Gary?

2 **A. He is one of the mechanics at night.**

3 **Q.** What did you ask him to do?

4 **A. I asked him to check the trucks over there**

5 **and make sure what we had, that if we had anything**

6 **that was broken, because they were coming apart too**

7 **frequently and so many of them.**

8 **Q.** Was this an occasional request that you

9 made of mechanics?

10 **A. Quite often.**

11 **Q.** Why?

12 **A. Because we're trying catch them before**

13 **they would disintegrate. We were trying to keep up**

14 **with them, because, unfortunately, when the flywheel**

15 **cracks, if you can catch it before it takes the block**

16 **with it, it's less of a job. Unfortunately, most of**

17 **them that crack, they take the right-hand -- the**

18 **corner of the block.**

19 **Q.** So this was preventative maintenance or --

20 **A. Yes.**

21 **Q.** On September 30, 2004, it says "7400 back

22 to CAT, exhaust leaking." Is that the 7400 that was

23 out in early September?

24 **A. Yes.**

C. J. REPORTING 978.409.9090
www.cjreporting.com

1 replacing the block, it would just break again. But

2 this was their instructions that they received from

3 Caterpillar, which some squawking was done, and it

4 was finally fixed properly by putting a new block in

5 it and a flywheel.

6 **Q.** Who did the squawking?

7 **A. I believe I started doing the squawking,**

8 **and I believe Jay Howard did some squawking also.**

9 **Q.** Who did you speak to regarding this issue?

10 **A. I think I believe I spoke with Al Cardoza.**

11 **Q.** Where did that conversation take place?

12 **A. On the phone.**

13 **Q.** What was the substance of that

14 conversation?

15 **A. Why are you trying to take advantage of**

16 **us? The thing is warranted. You're going to put**

17 **something back together and it's going to break again**

18 **because you're not doing it properly.**

19 **Q.** What did Mr. Cardoza say in response?

20 **A. I don't even recall. It was a very heated**

21 **discussion. Because all I know is, they fixed it**

22 **properly and -- due to the diligence of the**

23 **Freightliner dealership being honest with us.**

24 **Q.** When you say "Freightliner," you

C. J. REPORTING 978.409.9090
www.cjreporting.com

consistently. I should clarify for the record.

A. Tri State Shrewsbury.

Q. Okay. "October 12, 2004, talked with Jim at MiltonCAT re setting up inspection. Will let me know. Maybe can be done at night." What inspection does this refer to?

A. These were the inspections for the Advantage program, the extended warranty that Caterpillar had available. The cost to us was \$55,920, and the stipulation was that every truck had to be inspected by them. There was a certain criteria it had to meet so it would be able to be basically insured or warranted with the extended warranty.

Due to our many trucks that were broken down, I had to try to make arrangements where we would have trucks available to deliver the product and have the minimal trucks in being tied up. And Jim was working this out with me, and the original plan was to do an inspection at night, but it didn't work that way.

Q. You earlier discussed language on the back of the sheet registering the serial numbers of the trucks with Al Cardoza. Do you recall when that

C. J. REPORTING 978.409.9090

www.cjreporting.com

PAGE 170

conversation took place?

A. That was way back in October of 2003 when I first went there.

Q. That was in one of your first meetings with Mr. Cardoza?

A. Yes, that was at Truck Service when I first met him.

Q. That was at the very first meeting with Mr. Cardoza?

A. Yes, that's when I was introduced to him at the garage.

MR. SAMITO: I have no more questions.

MR. GRUNERT: I'm going to have a few.

Just give me a minute.

REDIRECT EXAMINATION

BY MR. GRUNERT:

Q. Mr. Samito asked you about documents that Trans-Spec has related to these trucks beyond the ones that were included in Howard Exhibits 9 through 30. You referred to documents that Trans-Spec keeps at 7 Cristo Lane. What documents related to the trucks does Trans-Spec keep at 7 Cristo Lane?

A. I have no idea. Mostly mileage probably, anything to do with the way they run the office,

C. J. REPORTING 978.409.9090

www.cjreporting.com

PAGE 171

receipts, payments.

Q. When you said "mileage," what did you mean by that?

A. Well, they had to keep track of mileage for fuel tax purposes. That is basically where the corporate office is.

Q. Now, what kind of records recording mileage on the trucks are kept?

A. Well, they have to claim so many miles for fuel tax purposes. I don't know exactly what kind of records are kept. There are some kind of records.

Q. Are the mileage records generated annually?

A. Couldn't tell you.

Q. But there are mileage records that record the mileage on each of these trucks on particular dates, and those are kept at the 7 Cristo Lane office; correct?

A. I don't know if they're on particular dates or if they're monthly, annually, quarterly. I really couldn't tell you.

Q. Well, whether they're monthly or annually or quarterly, they're on a particular date; it's just you don't know how many dates per year; correct?

C. J. REPORTING 978.409.9090

www.cjreporting.com

A. I have no idea.

Q. And the best you can do is tell me that those are mileage records?

A. I don't know what you'd call them. I'd say there has to be some kind of records so they can report their fuel use. So I would say they're mileage.

Q. Now, the receipts that you referred to that are kept at 7 Cristo Lane, what did you mean by that?

A. Let's say they buy a truck, they get a receipt; they buy a doughnut, they get a receipt. Any business gets receipts when they purchase things. So I would assume they would have receipts for items purchased, et cetera, et cetera.

Q. So at 7 Cristo Lane, there are receipts evidencing Trans-Spec's receipt of the trucks involved in this case; correct?

A. I would imagine, yes.

Q. And there are receipts there evidencing Trans-Spec's receipts of other trucks that it may have received between 2000 and 2005; correct?

A. I would imagine.

Q. And you referred to payments. What did

C. J. REPORTING 978.409.9090

www.cjreporting.com

PAGE 173

you mean by payments?

A. Well, such if you paid to buy a flywheel housing, I'm sure there would be a receipt there of that.

Q. Well, so when you said "receipts" and when you said "payments," were you referring to the same type of documents?

A. Yeah, basically anything that money is expended for, I would assume you would get some type of receipt for it.

Q. All right. So stored at 7 Cristo Lane there are mileage records for each of the trucks involved in this case, receipts evidencing the receipt of the truck, of each of those 22 trucks, and then there are additional receipts evidencing parts or components for those trucks that Trans-Spec purchased; correct?

A. Parts, components, permits.

Q. Will there be things such as scale tickets or weight tickets kept at the 7 Cristo Lane location evidencing the weights that these various trucks were pulling on various occasions?

A. I really couldn't answer that question. I don't know.

C. J. REPORTING 978.409.9090

www.cjreporting.com

PAGE 174

Q. Other than the mileage records and the receipts that are kept at 7 Cristo Lane, what other records related to these trucks are kept at that location?

A. Probably the fees for registration, overweight permits.

Q. I'm sorry, I missed the first one?

A. Overweight permits.

Q. Overweight permits.

A. Registrations.

Q. Bear with me here. I've seen references to overweight permits. When does a common carrier such as Trans-Spec obtain an overweight permit?

A. Every 12 months you have to have -- from the Massachusetts Department of Highways, you have a permit called an overweight permit. You also have to have an overweight permit to use the Massachusetts Turnpike. It's basically just another way of collecting money for the Commonwealth.

Q. This is Massachusetts.

A. Right.

Q. The overweight; is there a particular weight specified by the Commonwealth that if you're going to operate a vehicle on the highways of the

C. J. REPORTING 978.409.9090

www.cjreporting.com